

REMARKS

The present amendment is in response to the Office action dated January 5, 2007, rejecting claims 39-53. Claims 39, 45, and 51 have been amended and claims 49 and 50 have been cancelled without prejudice. Claim 54 has been added. Accordingly, claims 39-48 and 51-54 are pending in the present application with claims 39, 45, and 54 being the independent claims. Reconsideration and allowance of pending claims 39-48 and 51-54 in view of the amendments and the following remarks are respectfully requested.

A. Claim Objections

Claims 51 and 52 have been rejected due to the following informality: "one code section . . . comprises two code sections." Applicant did not find such language in claims 51 and 52, but found such language in claims 50 and 51, which reference claim 45. Applicant has canceled claim 50 and amended claims 51 and 45. Currently, the "at least one code section" has been amended to be a "plurality of code sections" in claim 45. Applicant respectfully submits that the present corrections address the informalities.

B. Rejection of Claims 39-47 and 49-53 Under 35 USC §103

In the Office Action, Claims 39-47 and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,449,476 ("Hutchison") in view of U.S. Patent No. 6,457,174 ("Kuroda"). With regard to independent claims 39 and 45, the Office Action states that Hutchison teaches the limitations of claims 39 and 45, but does not teach "updating a symbol offset address table which stores an offset reference for each symbol of the plurality of symbols in at least one symbol library of the each code section, the offset reference comprising an offset value derived from the start address of

each code section." The Office Action further states that Kuroda teaches these limitations. The Examiner states that the combination of Hutchison and Kuroda makes the claims obvious. This rejection is traversed as follows.

A claim is unpatentable if the differences between it and the cited references would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the cited reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the cited references, and not based on Applicant's disclosure.

1. Suggestion or Motivation to Combine

In the Office Action, no motivation has been supplied for combining the references. The subject matter of the present claims is related to wireless communication devices and overwriting sections of the system software via an airlink to devices that are deployed in the field. The Hutchison reference is directed to downloading optional features into a memory of a wireless communication device. (See, Hutchison, Column 2, Lines 33-36). The Kuroda reference is directed to program linking such that the content of a program recorded in a ROM can be independent of a memory map of a microcomputer control system. (See, Kuroda, Column 4, Lines 25-31).

There are very significant differences between Kuroda and Hutchison and the present claims. Neither of the references relate to updating system software as in the present claims. While Hutchison deals with downloading optional features, such downloads are not occurring in the context of an update to an existing system, but instead are directed to extensions and additions to existing systems.

As such, one might be motivated by Hutchison in combination with Kuroda to download software in an environment having volatile and non-volatile memory. However, one would not be motivated to overwrite one of the code sections as is presently claimed with an update code section, since Hutchison deals with extending a current system with new tools, not overwriting a current system with a newer, enhanced system.

In fact, Hutchison teaches away from overwriting the old version with a new version in Figure 2. From Figure 2 of Hutchison it is clear that "feature 1" 124 and "feature 2" 126 both exist in the same flash PROM 116 as do all of the other features that may be downloaded as additions to or extensions of Hutchison's system. Even if Hutchison contemplates the possibility that feature 2 might be "replaced," Hutchison does not describe a process whereby feature 2 would be overwritten. In fact Hutchison discusses modifying pointers in the context of downloading feature 2, which suggests that feature 2 would reside in a different memory location, requiring a new pointer, rather than being overwritten.

Moreover, Hutchison teaches the allocation of certain blocks or "bundles" in the Flash PROM for certain features. (See, Hutchison, Column 6, Lines 9-15). The replacement of Feature 2 in Hutchison takes place in the context of "reprogramming"

the appropriate bundle, not overwriting it. (See, Hutchison, Column 7, Lines 19-20). Hutchison, therefore, suggests that there are general areas where features would be located and that pointers might be manipulated to point to the appropriate locations in those blocks, but nowhere does the teaching of Hutchison suggest a need to overwrite anything in the allocated blocks. Therefore, Hutchison in view of Kuroda teach away from the present claims, and as a result, there is not a suggestion or a motivation to combine Hutchison with Kuroda.

2. Reasonable Expectation of Success

Further, the Examiner has not demonstrated that the modification of the cited references points to the reasonable expectation of success in the present claims, which is the second requirement of the obviousness analysis. For example, Applicant claims "overwriting at least a portion of a code section of a plurality of code sections stored in a code storage section of the nonvolatile memory . . ." in amended claim 39 and "a patch manager code section configured to overwrite at least one of the plurality of code sections . . ." in amended claim 45.

Since Hutchison "reprograms" feature 2 in its Flash PROM by downloading it and modifying the pointers to feature 2 (See, Hutchison, Column 7, Lines 14-20), both features still remain in PROM and feature 2 is not overwritten. All that Hutchison achieves is a manipulation of pointers so that the new feature 2 is used instead of the old feature 2. (See, Hutchison, Column 7, Lines 10-20).

There would not be a reasonable expectation of succeeding when Hutchison is combined with Kuroda because a programmable memory as in Hutchison, or another type of non-volatile memory, is limited in size and is expensive. As updates were

downloaded and placed in non-volatile memory, such a memory would quickly fill up. Soon there would be no room left in the memory, and then new updates could not be downloaded anymore since the memory is finite.

As such, Hutchison in view of Kuroda would not work properly, since the claimed overwriting allows for an unlimited number of updates to be received by the communication device over its lifespan. On the contrary, reprogramming through pointer manipulation, as in Hutchison, would quickly fill up the memory or allocated blocks and then the proposed combination could not be reasonably expected to succeed.

3. Combined References Must Teach All Claim Limitations

With respect to the third prong of an obviousness analysis, the combination of the references does not yield all the limitations of the claims. For example, claim 39 currently has the following limitation:

overwriting at least a portion of a code section of a plurality of code sections stored in a code storage section of the nonvolatile memory with the update code section, each code section of the plurality of code sections comprising at least one symbol library, having a plurality of symbols of related functionality.

Claim 45 currently has the following limitation:

a patch manager code section configured to overwrite at least one of the plurality of code sections.

Neither Kuroda nor Hutchison deal with overwriting code sections. Kuroda deals with a linking mechanism. Linking differs from overwriting because linking merely implies rearranging pointers or references to data and not overwriting old data with new data or changing the underlying data in any way.

Hutchison contemplates the possibility that new code could be downloaded that would result in reprogramming an old code bundle. However, Hutchison does not state that the new code would overwrite the old code as is presently claimed. Instead, Hutchison contemplates a pointer manipulation in the context of a new "feature 2," in a dedicated block where that feature could exist in Flash PROM. This suggests that Hutchison does not overwrite the old feature 2. Similarly, Hutchison does not overwrite an old feature 2 with a new feature 2, so even if Hutchison is performing a step of updating an old feature 2, it does not do so by overwriting the feature, but instead uses pointer manipulation.

Claims 40-44 depend from and further refine independent claim 39. Claims 46-48 and 51-53 depend from and further refine independent claim 45. Applicant has argued that independent claims 39 and 45 are in a condition for allowance. For at least the reasons discussed with respect to claims 39 and 45, claims 40-44, 46-48, and 51-53 are in a condition for allowance as well. Accordingly, since the combination of references does not include all the limitations of claims of the independent claims 39 and 45 and their respective dependent claims, the Applicant requests that the rejection be withdrawn.

C. Rejection of Claim 48 Under 35 USC §103

In the Office Action, Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchison in view of Kuroda and in further view of U.S. Patent Application No. 2002/0026634 ("Shaw").

Claim 48 depends from and further refines independent claim 45. Applicant has argued that independent claim 45 is in a condition for allowance. For at least the

reasons discussed with respect to claim 45, claim 48 is in a condition for allowance as well. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

D. Conclusion

For all the foregoing reasons, allowance of claims 39-48 and 51-54 pending in the present application is respectfully requested. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

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